STATE OF MICHIGAN

COURT OF APPEALS

GREG WURTZ and JULIE WURTZ,

Plaintiffs-Appellees,

v

WAYNE GARNO,

Defendant,

and

SUE GARNO,

Defendant-Appellant.

UNPUBLISHED
April 3, 2007

No. 264702
Saginaw Circuit Court
LC No. 01-040320-CH

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals the trial court's order that quieted title to a 51-foot parcel of property in plaintiffs, Greg and Julie Wurtz. For the reasons set forth below, we affirm.

The issue here is whether the 1958 deed from Raymond and Elizabeth Bell and Guy and Mary Crowell to Anthony and Hilda Spadafore (plaintiffs' predecessors in title) represents an outright conveyance of the 199.64 feet of property listed on the deed, including the 51 feet of property at issue here (as argued by plaintiffs), or whether this conveyance to the Spadafores represents an exception that permitted the Crowells to retain ownership of the parcel, which was later conveyed outright to defendant's predecessor in title.[1] We hold that title to the entire 199.64 feet of property rests with plaintiffs and that the conveyance to the Spadafores was not an exception reserving title with defendant's predecessors in title.[2]

In analyzing this issue, we must first look to the plain language of the deeds to determine the parties' intent. "Where the property is taken by purchase, the character of the estate is

[1] For purposes of this opinion, we will refer to the parent parcel of land as "Parcel A." In addition, we will refer to defendant's parcel as Parcel B and plaintiffs' parcel as Parcel C.

[2] This Court reviews equitable actions to quiet title de novo, while the court's factual findings are reviewed for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

determined by the terms of [the] grant . . . ." *Quinn v Pere Marquette R Co*, 256 Mich 143, 150; 239 NW 376 (1931). Our Supreme Court has set forth the following principles with respect to the interpretation and construction of deed language:

> (1) In construing a deed of conveyance[,] the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2) in arriving at the intent of parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable. [*Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005) (citation omitted; alterations in original).]

The plain language of the deed controls as it evinces the parties' intent. *Id*.

Defendant maintains that the language in the 1958 Spadafore deed constitutes an exception held in favor of the grantors. An "exception" withdraws a portion of the real property from the description conveyed, or excludes from the grant something that is not intended to be granted. In contrast, a "reservation" does not change the description of the property conveyed, but rather reserves for the grantor a right or interest in the real property, such as an easement. A reservation establishes a new right or interest. See Black's Law Dictionary (8th ed); see also *Peck v McClelland*, 247 Mich 369, 370-371; 225 NW 514 (1929) and *Mott v Stanlake*, 63 Mich App 440, 443; 234 NW2d 667 (1975). A reservation differs from an exception because a reservation vests full title in the property to the grantee while the grantor retains some specific right. *Bolio v Marvin*, 130 Mich 82, 83-84; 89 NW 563 (1902). In contrast, "[w]hatever is excluded from the grant by exception remains in the grantor as of his former title or right." *Peck*, *supra* at 371.

Generally, an easement may not be *reserved* for the benefit of a stranger to the deed or grant, but the grantor may establish an *exception* for a third party. *Mott*, *supra* at 441-442, citing *Choals v Plummer*, 353 Mich 64, 71; 90 NW2d 851 (1958). Application of the rule requires a three-part analysis: (1) whether the conveyance contains ordinary words of reservation; (2) whether language of exception created or provided notice of a third-party's interest; and (3) whether there was an intent to create rights in a stranger to the instrument. *Choals*, *supra* at 69, 71; *Martin*, *supra* at 269, 272; *Mott*, *supra* at 442-444.

The 1958 deed to the Spadafores conveyed 199.64 feet of property "subject to the East Fifty-one (51) feet to be used for road purposes." The legal description includes the 51 feet. In light of the reasoning in *Bolio*, *supra*, the language regarding the 51-foot strip in plaintiffs' chain of title is a reservation, because the deed specifically conveyed all of the 199.64 feet of property. If the grantors intended to convey less than the full parcel, the 51-foot strip could have been easily excluded from the description, but it was not. Further, it belies common sense to follow defendant's interpretation. Importantly, the 1958 conveyance to the Spadafores was made by both the Bells and the Crowells. The Bells owned Parcel A and the Crowells owned Parcel B, which at the time of conveyance included the 51 feet of property claimed by defendant. There

was no reason for the Crowells to join in the conveyance to the Spadafores if the parties did not intend to make an outright conveyance of the 51 feet to the Spadafores. This establishes the clear intention of the Crowells to convey outright the 51 feet to the Spadafores because, again, they otherwise would not have had to join in the conveyance.

As noted above, the language of the deed said: "subject to the East Fifty-one (51) feet to be used for road purposes." "Black's Law Dictionary (6th ed), defines 'subject to' as 'liable, subordinate, subservient, inferior, obedient to . . . .'" *Craig v Detroit Pub Sch Chief Exec Officer*, 265 Mich App 572, 577; 697 NW2d 529 (2005). This language did not expressly create any reservation or exception. The language used created only a reservation right held by the grantors to use the 51 feet for road purposes. No language contained in the deeds in plaintiffs' chain of title demonstrated that the land was to be held in use for a third party. Thus, the conveyance created only a reservation in favor of the grantors, not an exception. In light of the language contained in the deed, construing the 1958 deed as an outright conveyance to the Spadafores subject to a reservation fully captures the intent of the parties at the time of conveyance.[3]

Having determined that plaintiffs own the property in fee simple, we must determine if it remains subject to the reservation of an easement. "Where the intent to create an easement is not clear, the issue is to be resolved in favor of use of the land free of an easement." *Forge v Smith*, 458 Mich 198, 209; 580 NW2d 876 (1998). Though we find that the language contained in the deed did not clearly create an easement, we also hold that the reservation of an easement was abandoned. In *MacLeod v Hamilton*, 254 Mich 653, 656; 236 NW 912 (1931), our Supreme Court addressed an issue relating to the abandonment of an easement, which is applicable to the instant case. In *MacLeod*, a deed conveyed to Oakland County an easement for the establishment of a sewer and drainage system; however, the easement was never used for that purpose. The easement had been dormant for 54 years, and the county, in fact, had established a drainage system in another location. *Id*. The Court stated: "'A grant of an easement for particular purposes having been made, the right thereto terminates as soon as the purposes for which granted cease to exist or are abandoned or are impossible.'" *Id.*, quoting *Chicago & NW Ry Co v Sioux City Stockyards Co*, 176 Iowa 659; 158 NW 769 (1916). "The grant was of an easement for drainage purposes only, and when the contemplated purpose was abandoned by establishment of the drain elsewhere the right of way ceased and the easement was but a cloud." *Id.*

Here, defendant and her predecessors clearly abandoned the reservation of an easement. Consistent with the principle that an easement may not be reserved for the benefit of a stranger to the deed or grant, the reservation could only be held by the Crowells. *Mott*, *supra* at 441-442. The Crowells did not exercise their reservation and this constitutes a clear intent to abandon the

[3] Contrary to defendant's argument, the Crowells deeded only a portion of the 66-foot strip of land to the Spadafores, *all* that was remaining, which includes the 15-foot strip of land providing access from defendant's property to the M-46, known as Crowell Road. Indeed, it is significant that the only means of ingress and egress to all homes located on Crowell Road is Crowell Road itself, which comprises the 15 feet of property that remained in defendant's chain of title following the conveyance to the Spadafores. This clearly demonstrates that the Crowells retained a portion of the property in order to prevent Parcel C from being landlocked as it provides the necessary means of ingress and egress.

reservation of the easement. Furthermore, pursuant to *MacLeod*, for more than 25 years, all residents of Crowell Road have used Crowell Road as the only means of ingress and egress to the property, evidencing a clear intent to abandon the reservation to an easement by establishing a roadway elsewhere. Significantly, the parties stipulated that the home lying directly south of plaintiffs lies within 37 feet of Crowell Drive. This demonstrates a clear intent of the parties to abandon any use of the 51 feet for roadway purposes. This also evidences the parties' intent because the home lies well within the 66 feet of property claimed by defendant. Because the acts of defendant's predecessors and the other property owners indicate a clear intent to abandon the reservation of an easement, plaintiffs clearly hold title in fee simple to the property without any easement or reservation of an easement.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kurtis T. Wilder